

(4) One thousand dollars for speed greater than twenty-five miles per hour over the posted speed limit.

Sec. 37. 2007 Iowa Acts, chapter 143, section 35, subsection 4, is amended to read as follows:

4. The sections of this Act amending sections 321.112 and 321.115 take effect ~~July 1, 2008~~ January 1, 2009.

Sec. 38. 2007 Iowa Acts, chapter 167, is repealed.

Sec. 39. COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BONDS — DEFEASANCE. The Iowa comprehensive petroleum underground storage tank fund board shall authorize the Iowa finance authority to defease all bonds issued pursuant to chapter 455G prior to June 30, 2008. The authority shall defease the bonds by June 30, 2008, from funds available in the Iowa comprehensive petroleum underground storage tank fund.

Sec. 40. EFFECTIVE DATE. The sections of this Act amending sections 321E.8, 321E.9, 321E.14, and 322.7A, the section enacting section 321E.9B, and the section repealing 2007 Iowa Acts, chapter 167, being deemed of immediate importance, take effect upon enactment.³

Sec. 41. CONTINGENT EFFECTIVENESS. The section of this Act relating to the defeasance of petroleum underground storage tank fund bonds takes effect only upon enactment of legislation striking section 423.43, subsection 1, paragraph “a”, Code Supplement 2007, by the Eighty-second General Assembly.⁴

Approved April 25, 2008

CHAPTER 1125

FORECLOSURE CONSULTANTS AND RECONVEYANCES

H.F. 2653

AN ACT relating to foreclosure consultants and foreclosure reconveyances, providing for criminal and civil penalties, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 714E.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. “Business day” means any calendar day except Saturday, Sunday, or a public holiday including a holiday observed on a Monday.
2. “Contract” means an agreement, or a term in an agreement, between a foreclosure consultant and an owner for the rendition of a service.
3. a. “Foreclosure consultant” means a person who, directly or indirectly, makes a solicitation, representation, or offer to an owner to perform for compensation or who, for compensation, performs a service which the person in any manner represents will do any of the following:
 - (1) Stop or postpone a foreclosure, foreclosure sale, forfeiture, sheriff’s sale, or tax sale.

³ See chapter 1191, §136 herein

⁴ See chapter 1113, §45, 125; chapter 1134, §14 herein

- (2) Obtain a forbearance, modification, or repayment plan from a beneficiary or mortgagee.
 - (3) Assist the owner to exercise the right of redemption, cure the mortgage default, cure the real estate contract default, or redeem the property from a tax sale.
 - (4) Obtain an extension of the period within which the owner may reinstate the owner's obligation.
 - (5) Obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage.
 - (6) Assist the owner in foreclosure, foreclosure sale, forfeiture, sheriff's sale, tax sale, or loan default to obtain a loan or advance of funds.
 - (7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or a forfeiture of a real estate contract.
 - (8) Save the owner's residence from foreclosure, foreclosure sale, forfeiture, sheriff's sale, or tax sale.
 - (9) Negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer.
- b. "Foreclosure consultant" does not include any of the following:
- (1) A person licensed to practice law in this state when the person renders service in the course of the person's practice as an attorney at law.
 - (2) A person licensed to engage in the business of debt management under chapter 533A, when the person is engaged in the business of debt management.
 - (3) A person licensed as a real estate broker or salesperson under chapter 543B, when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure.
 - (4) A person licensed as an accountant under chapter 542 when the person is acting in any capacity for which the person is licensed under those provisions.
 - (5) A person or the person's authorized agent acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide services.
 - (6) A person who holds or is owed an obligation secured by a lien on a residence in foreclosure when the person performs services in connection with the obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance.
 - (7) A person or entity doing business under any law of this state, or of the United States, relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee approved by the United States department of housing and urban development, and a subsidiary or affiliate of these persons or entities, and an agent or employee of these persons or entities while engaged in the business of such persons or entities.
 - (8) A person licensed as a mortgage broker or mortgage banker pursuant to chapter 535B, when acting under the authority of that license.
 - (9) A person registered as a mortgage broker or mortgage banker or originator pursuant to chapter 535B, when acting under the authority of that registration.
 - (10) A nonprofit agency or organization that offers counseling or advice to an owner of a residence in foreclosure or loan default if the nonprofit agency or organization does not contract for services with for-profit lenders or foreclosure purchasers.
 - (11) A judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 654.2D, but excluding a person who purchased the claim after such personal service.
 - (12) A foreclosure purchaser as defined in section 714F.1.
4. "Foreclosure reconveyance" means a transaction involving all of the following:
- a. The transfer of title to real property by an owner during a foreclosure proceeding, forfeiture proceeding, or tax sale, either by transfer of interest from the owner or by creation of a mortgage or other lien or encumbrance during the foreclosure, forfeiture, or tax sale process

that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder.

b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the owner by the acquirer or a person acting in participation with the acquirer that allows the owner to possess either the residence in foreclosure or any other real property, which interest includes but is not limited to an interest in a contract for deed, purchase agreement, option to purchase, or lease.

5. "Owner" means the record owner or holder of an equitable interest through contract of the residence in foreclosure at the time the notice of pendency was recorded, or at the time the default notice was served.

6. "Person" means the same as defined in section 4.1.

7. "Residence in foreclosure" or "affected residence" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where a delinquency or default on any loan payment or debt is secured by or attached to the residential real property including but not limited to contract for deed payments, real estate contracts, or real estate taxes.

8. "Service" includes but is not limited to any of the following:

- a. Debt, budget, or financial counseling of any type.
- b. Receiving money for the purpose of distributing the money to creditors in payment or partial payment of an obligation secured by a lien on a residence in foreclosure.
- c. Contacting creditors on behalf of an owner of a residence in foreclosure.
- d. Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure, forfeiture, or tax sale may cure the owner's default and reinstate the owner's obligation.
- e. Arranging or attempting to arrange for a delay or postponement of the time of sale of the residence in foreclosure, forfeiture, or tax sale.
- f. Advising the filing of a document or assisting in any manner in the preparation of a document for filing with a bankruptcy court.
- g. Giving advice, explanation, or instruction to an owner of a residence in foreclosure, forfeiture, or tax sale which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the affected residence, the full satisfaction of that obligation, or the postponement or avoidance of a sale or loss of the affected residence, pursuant to a power of sale contained in a mortgage.

Sec. 2. NEW SECTION. 714E.2 FORECLOSURE CONSULTANT CONTRACT.

1. A foreclosure consultant contract must be in writing and must fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.

2. The following notice, printed in at least fourteen point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the notice of cancellation statement required pursuant to section 714E.3:

NOTICE REQUIRED BY IOWA LAW

..... (name) or anyone working for him or her CANNOT:

- (1) Take any money from you or ask you for money until (name) has completely finished doing everything he or she said he or she would do; and¹
- (2) Ask you to sign or have you sign any lien, mortgage, or real estate contract.

3. The contract must be written in the same language as principally used by the foreclosure consultant to describe the foreclosure consultant's services and to negotiate the contract with the consumer. The contract must be dated and signed by the owner, and must contain in immediate proximity to the space reserved in the contract for the owner's signature, a conspicuous statement in a size equal to at least ten point boldface type, as follows:

You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

¹ See chapter 1191, §133 herein

4. The foreclosure consultant shall provide the owner immediately upon execution of the contract with a copy of the contract along with the notice of cancellation required in section 714E.3.

5. The three business days during which the owner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this section and with section 714E.3.

Sec. 3. NEW SECTION. 714E.3 CANCELLATION OF FORECLOSURE CONSULTANT CONTRACT.

1. In addition to any other right under law to rescind a contract, an owner has the right to cancel such a contract until midnight of the third business day after the day on which the owner signs a contract which complies with section 714E.2.

2. Cancellation occurs when the owner gives written notice of cancellation to the foreclosure consultant at the address specified in the contract.

3. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

4. Notice of cancellation given by the owner need not take the particular form as provided in the contract and, however expressed, is effective if the notice of cancellation indicates the intention of the owner not to be bound by the contract.

5. The notice of cancellation must contain, and the contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, all of the following:

a. The real name and physical address of the foreclosure consultant to which the notice of cancellation is to be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An electronic mail address may be included, in addition to the physical address.

b. The date the owner signed the contract.

c. Cancellation occurs when the owner delivers, by any means, written notice of cancellation to the address specified in the contract. If cancellation is mailed, delivery is effective upon mailing. If electronically mailed, cancellation is effective upon transmission. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation", which must be attached to the contract, must be easily detachable, and must contain in at least ten point type the following statement written in the same language as used in the contract:

NOTICE OF CANCELLATION

.....
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation to at
(name of foreclosure consultant)

.....
(physical address of foreclosure consultant's place of business)

.....
(e-mail address of foreclosure consultant's place of business)

Not later than midnight of (date).

I hereby cancel this transaction.

.....
(date)

.....
(owner's signature)

6. The three business days during which the owner may cancel the contract shall not begin

to run until the foreclosure consultant has complied with the requirements of this section and with section 714E.2.

Sec. 4. NEW SECTION. 714E.4 VIOLATIONS.

It is a violation for a foreclosure consultant to do any of the following:

1. Claim, demand, charge, collect, or receive compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented the foreclosure consultant would perform.
2. Claim, demand, charge, collect, or receive a fee, interest, or other compensation for any reason which exceeds eight percent per annum of the amount of any loan which the foreclosure consultant may make to the owner. Such a loan must not, as provided in subsection 3, be secured by the residence in foreclosure or any other real or personal property.
3. Take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable.
4. Receive consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner.
5. Acquire an interest, directly or indirectly, or by means of a subsidiary or affiliate in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted.
6. Take a power of attorney from an owner for any purpose, except to inspect documents as provided by law.
7. Induce or attempt to induce an owner to enter into a contract which does not comply in all respects with the requirements of this chapter.
8. Claim, demand, charge, collect, or receive a fee, interest, or other compensation for promising to negotiate a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer and failing to successfully negotiate such a modification, forbearance, repayment plan, or other loss mitigation.
9. Prohibit the borrower from contacting any lender, servicer, government entity, attorney, counselor, individual, or company that may seek to help the consumer. Any such provision is void and unenforceable.

Sec. 5. NEW SECTION. 714E.5 WAIVER NOT ALLOWED.

A waiver by an owner of the provisions of this chapter is void and unenforceable as contrary to public policy. An attempt by a foreclosure consultant to induce an owner to waive the owner's rights is a violation of this chapter.

Sec. 6. NEW SECTION. 714E.6 REMEDIES.

1. A violation of this chapter is an unlawful practice pursuant to section 714.16, and all remedies of section 714.16 are available for such an action. A private cause of action brought under this chapter by an owner is in the public interest. An owner may bring an action against a foreclosure consultant for a violation of this chapter. If the court finds that the foreclosure consultant violated this chapter, the court shall award the owner actual damages, appropriate equitable relief, and the costs of the action, and shall award reasonable fees to the owner's attorney.
2. The rights and remedies provided in subsection 1 are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought by a person other than the attorney general pursuant to this section must be commenced within four years from the date of the alleged violation.
3. The court may award exemplary damages up to one and one-half times the compensation, fees, and interest charged by the foreclosure consultant if the court finds that the foreclosure consultant violated the provisions of section 714E.4, subsection 1, 2, or 4, and the foreclosure consultant acted in bad faith.
4. Notwithstanding any other provision of this section, an action shall not be brought on the basis of a violation of this chapter, except by an owner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by either

the attorney general or the superintendent of the banking division of the department of commerce.

Sec. 7. NEW SECTION. 714E.7 CRIMINAL PENALTY.

A person who commits any violation described in section 714E.4 commits a serious misdemeanor. Prosecution or conviction for a violation described in section 714E.4 shall not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided.

Sec. 8. NEW SECTION. 714E.8 PROVISIONS SEVERABLE.

If any provision of sections 714E.2 through 714E.7 and 714E.9 or the application of any of these provisions to any person or circumstance is held to be unconstitutional and void, the remainder of sections 714E.2 through 714E.7 and 714E.9 remains valid.

Sec. 9. NEW SECTION. 714E.9 ARBITRATION PROHIBITED.

A provision in a contract which attempts or purports to require arbitration of a dispute arising under sections 714E.2 through 714E.5 is void at the option of the owner.

Sec. 10. NEW SECTION. 714F.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Business day" means any calendar day except Saturday, Sunday, or a public holiday including a holiday observed on a Monday.
2. "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure, forfeiture, or tax sale.
3. a. "Foreclosure purchaser" means a person that has acted as the acquirer in a foreclosure reconveyance. "Foreclosure purchaser" includes a person that has acted in joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance.
b. "Foreclosure purchaser" does not include any of the following:
 - (1) A natural person who shows that the natural person is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner.
 - (2) A person or entity doing business under any law of this state, or of the United States, relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee or mortgage servicer approved by the United States department of housing and urban development or any other nationally recognized government-sponsored enterprise, and any subsidiary or affiliate of such persons or entities, and any agent or employee of such persons or entities while engaged in the business of such persons or entities.
4. "Foreclosure reconveyance" means a transaction involving both of the following:
 - a. The transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, forfeiture proceeding, or tax sale proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder.
 - b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the affected homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the affected residence or other real property, which interest includes but is not limited to an interest in a contract for deed, purchase agreement, option to purchase, or lease.
5. "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.
6. "Resale price" means the gross sale price of the property on resale.
7. "Residence in foreclosure" or "affected residence" means residential real property consisting of one to four family dwelling units, one of which the foreclosed homeowner occupies

as the foreclosed homeowner's principal place of residence, where a delinquency or default on any loan payment or debt is secured by or attached to the residential real property, including but not limited to contract for deed payments, real estate contracts, or real estate taxes.

Sec. 11. NEW SECTION. 714F.2 CONTRACT REQUIREMENT — FORM AND LANGUAGE.

A foreclosure purchaser shall enter into a foreclosure reconveyance in the form of a written contract. The contract must be written in letters of a size equal to at least twelve point boldface type, in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure, and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

Sec. 12. NEW SECTION. 714F.3 CONTRACT TERMS.

1. A contract required by section 714F.2 must contain the entire agreement of the parties and shall include all the following terms:

- a. The real name, business address, and the telephone number of the foreclosure purchaser.
- b. The address of the residence in foreclosure.
- c. The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale.
- d. A complete description of the terms of payment or other consideration including but not limited to any services of any nature that the foreclosure purchaser represents the foreclosure purchaser will perform for the foreclosed homeowner before or after the sale.
- e. The time at which possession is to be transferred to the foreclosure purchaser.
- f. A complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home including but not limited to a rental agreement, repurchase agreement, contract for deed, or lease with option to buy.
- g. A notice of cancellation as provided in section 714F.5.
- h. The following notice in at least fourteen point boldface type, if the contract is printed or in capital letters if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 714F.5:

NOTICE REQUIRED BY IOWA LAW

Until your right to cancel this contract has ended, (name) or anyone working for (name) CANNOT ask you to sign or have you sign any deed or any other document.

2. The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, and has no effect on persons other than the parties to the contract.

Sec. 13. NEW SECTION. 714F.4 CONTRACT CANCELLATION.

1. In addition to any other right of rescission, the foreclosed homeowner has the right to cancel any contract with a foreclosure purchaser until midnight of the third business day following the day on which the foreclosed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

2. Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation, provided that, at a minimum, the contract and the notice of cancellation contains a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An electronically mailed address may be provided in addition to the physical address. If cancellation is mailed, delivery is effective upon mailing. If electronically mailed, cancellation is effective upon transmission.

3. A notice of cancellation given by the foreclosed homeowner need not take the particular form as provided with the contract.

4. Within ten days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

Sec. 14. NEW SECTION. 714F.5 NOTICE OF CANCELLATION.

1. The contract must contain in immediate proximity to the space reserved for the foreclosed homeowner's signature a conspicuous statement in a size equal to at least fourteen point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

You may cancel this contract for the sale of your house without any penalty or obligation at any time before (date and time of day)

See the attached notice of cancellation form for an explanation of this right.

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

2. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in a size equal to a twelve point boldface type if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes the contract. This form must be attached to the contract, must be easily detachable, and must contain in type of at least ten points, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

NOTICE OF CANCELLATION

.....
(enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

(enter date and time of day)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) e-mail a notice of cancellation to.....at.....

(name of purchaser) (physical address of purchaser's place of business)

.....
(e-mail address of foreclosure consultant's place of business)

Not later than (enter date and time of day)

I hereby cancel this transaction.

.....
(date)

.....
(seller's signature)

3. The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

4. The three business days during which the foreclosed homeowner may cancel the contract shall not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

Sec. 15. NEW SECTION. 714F.6 WAIVER.

A waiver of the provisions of this chapter is void and unenforceable as contrary to public policy except a consumer may waive the three-day right to cancel provided in section 714F.4 if the property is subject to a foreclosure sale, tax sale, or contract forfeiture within the three business days and the shortened cancellation period was not caused by the foreclosure purchaser or an agent of the foreclosure purchaser, and the foreclosed homeowner agrees to waive the foreclosed homeowner's right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

Sec. 16. NEW SECTION. 714F.7 ARBITRATION PROHIBITED.

A provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the foreclosed homeowner.

Sec. 17. NEW SECTION. 714F.8 PROHIBITED PRACTICES.

A foreclosure purchaser shall not do any of the following:

1. Enter into, or attempt to enter into, a foreclosure reconveyance with a foreclosed homeowner unless all of the following apply:

a. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. A rebuttable presumption arises that a foreclosed homeowner is reasonably able to pay for the subsequent conveyance if the foreclosed homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent of the foreclosed homeowner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes, and association dues. A rebuttable presumption arises that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities, and income.

b. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or the creation of a mortgage on the real property conducted by a closing agent, who is not employed by or an affiliate of the foreclosure purchaser, or employed by such an affiliate, and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services.

c. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property.

d. The foreclosure purchaser complies with the requirements for disclosure, loan terms, and conduct in the federal Home Ownership Equity Protection Act, 15 U.S.C. § 1639, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in 12 C.F.R. section 226.32 (a) and (b).

2. Enter into a foreclosure reconveyance unless the foreclosure purchaser notifies all existing mortgage lien holders of the foreclosure purchaser's intent to accept conveyance of any interest in the property from the foreclosed homeowner, and fully complies with all terms and conditions contained in the mortgage lien documents including but not limited to due-on-sale provisions or meeting all qualification requirements for assuming the repayment of the mortgage.

3. Fail to do any of the following:

a. Ensure that title to the subject dwelling has been reconveyed to the foreclosed homeowner.

b. (1) Make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property, as the property was when the foreclosed homeowner vacated the property, within ninety days of either the eviction or voluntary relinquishment of possession of the property by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this ninety-

day period. The accounting shall be on a form prescribed by the attorney general, in consultation with the superintendent of the banking division of the department of commerce without being subject to the rulemaking procedures of chapter 17A.

(2) For purposes of this paragraph “b”, all of the following shall apply:

(a) A rebuttable presumption arises that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property.

(b) The time for determining the fair market value amount shall be determined in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within sixty days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within sixty days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted within one hundred eighty days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner and payment, if required, shall be made to the foreclosed homeowner, but the fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate, based on the resale price, shall be made to the foreclosed homeowner within fifteen days of resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within fifteen days of resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the attorney general, in consultation with the superintendent of the banking division of the department of commerce, without being subject to the rulemaking procedures of chapter 17A.

(c) “Consideration” means any payment or thing of value provided to the foreclosed homeowner, including unpaid rent or contract for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner that creates a lien against the affected residence, or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner; or a penalty imposed by a court for the filing of a frivolous claim under section 714F.9, subsection 6, but “consideration” shall not include amounts imputed as a down payment or fee to the foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident to a contract for deed, lease, or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary to complete the foreclosure reconveyance.

3.² Enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct.

4.³ Represent, directly or indirectly, any of the following:

a. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represents that the foreclosure purchaser is acting on behalf of the foreclosed homeowner.

b. The foreclosure purchaser has a qualification, certification, or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue.

c. The foreclosure purchaser is assisting the foreclosed homeowner to “save the house” or a substantially similar phrase.

d. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure, forfeiture, or tax sale if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property.

5.⁴ Make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including but not limited to statements regarding the value of the residence in

² According to enrolled Act; subsection “4” probably intended

³ According to enrolled Act; subsection “5” probably intended

⁴ According to enrolled Act; subsection “6” probably intended

foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

6.⁵ Do any of the following until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed:

- a. Accept from a foreclosed homeowner an execution of, or induce a foreclosed homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure.
- b. Record with the county recorder or file with the registrar of titles any document including but not limited to an instrument of conveyance, signed by the foreclosed homeowner.
- c. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

Sec. 18. NEW SECTION. 714F.9 ENFORCEMENT.

1. REMEDIES. A violation of this chapter is an unlawful practice pursuant to section 714.16, and all the remedies of section 714.16 are available for such an action. A private cause of action brought under this chapter by a foreclosed homeowner is in the public interest. A foreclosed homeowner may bring an action for a violation of this chapter. If the court finds a violation of this chapter, the court shall award to the foreclosed homeowner actual damages, appropriate equitable relief, and the costs of the action, and shall award reasonable fees to the foreclosed homeowner's attorney. Notwithstanding any other provision of this section, an action shall not be brought on the basis of a violation of this chapter except by a foreclosed homeowner against whom the violation was committed or by the attorney general. This limitation does not apply to administrative action by the superintendent of the banking division of the department of commerce.

2. EXEMPLARY DAMAGES. In a private right of action for a violation of this chapter, the court may award exemplary damages of any amount. If the court determines that an award of exemplary damages is appropriate, the amount of exemplary damages awarded shall not be less than one and one-half times the foreclosed homeowner's actual damages. Any claim for exemplary damages brought pursuant to this section must be commenced within four years after the date of the alleged violation.

3. REMEDIES CUMULATIVE. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. No action under this section shall affect the rights in the foreclosed property held by a good faith purchaser for value.

4. CRIMINAL PENALTY. A foreclosure purchaser who engages in a practice which would operate as a fraud or deceit upon a foreclosed homeowner is guilty of a serious misdemeanor. Prosecution or conviction for any one of the violations does not bar prosecution or conviction for any other offenses.

5. FAILURE OF TRANSACTION. Failure of the parties to complete the reconveyance transaction, in the absence of additional misconduct, shall not subject a foreclosure purchaser to the criminal penalties under this chapter.

6. STAY OF EVICTION ACTION.

a. A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay, without imposition of a bond, if the foreclosed homeowner makes a prima facie showing that all of the following apply:

(1) The foreclosed homeowner has done any of the following:

(a) Commenced an action concerning a foreclosure reconveyance.

(b) Asserts a defense that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of this chapter.

(c) Asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice, in connection with a foreclosure reconveyance.

⁵ According to enrolled Act; subsection "7" probably intended

(2) The foreclosed homeowner owned the residence in foreclosure.

(3) The foreclosed homeowner conveyed title to the residence in foreclosure to a third party upon a promise that the foreclosed homeowner would be allowed to occupy the residence in foreclosure or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the residence in foreclosure or other real property would be the subject of a foreclosure reconveyance.

(4) Since the conveyance, the foreclosed homeowner has continuously occupied the residence in foreclosure or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest.

b. For purposes of this subsection, notarized affidavits are acceptable means of proof to meet the foreclosed homeowner's burden. Upon good cause shown, a foreclosed homeowner may request and the court may grant up to an additional two weeks to produce evidence required to make the prima facie showing.

c. A court may award to a plaintiff a penalty of up to five hundred dollars upon a showing that the foreclosed homeowner filed a frivolous claim or asserted a frivolous defense.

d. The automatic stay expires upon the later of any of the following:

(1) The failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosed reconveyance transaction within ninety days after the issuance of the stay.

(2) The issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

Sec. 19. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 25, 2008

CHAPTER 1126

ENERGY AND WATER RESOURCE MANAGEMENT AND CONSERVATION — BUILDINGS AND VEHICLES

S.F. 517

AN ACT relating to the development, management, and efficient use of energy resources, making energy-related modifications to the state building code, setting fees, making appropriations, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 8.60, subsection 15, Code 2007, is amended by striking the subsection.

Sec. 2. Section 12.28, subsection 6, Code 2007, is amended to read as follows:

6. The maximum principal amount of financing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements